SUPREME COURT OF THE UNITED STATES.

ANN STANZIALE,
Petitioner,
Appellee below,

vs.

LT. COL. HOLMES G. T. PAULLIN,
Commanding Officer, Fort Dix,
N. J.,
Respondent,
Appellant below.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals is printed on page 42a of the record.

II.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 240 (A) of the Judicial Code as amended by the Act of February 13, 1925, C. 299, 43 Stat. 938 (28 U. S. C. 347).

2. The judgment of the Circuit Court of Appeals was entered October 6, 1943.

III.

Statement of the Case.

The facts in the case have already been related in the preceding petition under Titles I and III.

IV.

ARGUMENT.

(a) May a Federal Court on a writ of *habeas corpus* review the action of a Local Selective Service Board?

The Selective Service and Training Act of 1940 provides that a registrant may appeal from the action of a Local Board to a Board of Appeals and that their decision shall be final.

Local Selective Service Board and Boards of Appeals are judicial or quasi judicial in character.

The law courts have a general superintending control over all inferior tribunals acting in a judicial or quasi judicial character and jurisdiction is not entirely taken away by a statute declaring that the judgment of the inferior tribunal shall be final.

> *Angelus* v. *Sullivan*, 246 Fed. 54 (C. C. A. 2);
> *Arbitman* v. *Woodside*, 258 Fed. 441 (C. C. A. 4 1919).

Insofar as this question is concerned the decision of the Circuit Court opinion makes an assumption but no direct decision.

The question is one that should by decision be removed from the field of mere assumption.

(b) If a Federal Court reviews the action of a Local Selective Service Board on *habeas corpus* and if it appears that the Board has in reclassification wholely ignored the provisions of the Act as to classification, or if it appears that the reclassification made is wholely without evidence substantially to support it and therefore is arbitrary and capricious, may the Court order the registrant's discharge from the Army?

The Circuit Court of Appeals held that if one whom a Local Board has ordered to be inducted into the armed forces may obtain a judicial review of the action taken by his Board by way of *habeas corpus* then in that event under such proceedings the court was without right to review the facts before the Board at the time it made its classification and order of induction and the Board's findings and action thereon.

We do not contend the Court should under such review substitute itself for the Board and be triers of the facts.

We do contend that the rule is well established that the action of an executive board within the scope of its authority is final and not subject to judicial review when the investigation has been fair and the findings are supported by substantial evidence however upon proof that the investigation has not been fair; that the board has made errors of law; or that the board has abused its discretion by a find-

ing contrary to all the substantial evidence, relief will be given by the courts under the writ of *habeas corpus.*

We do contend in the instant case that the Local Board did make errors of law and did abuse its discretion by a finding contrary to all the substantial evidence.

The decision of the Circuit Court of Appeals conflicts with the decisions of *Phillips* v. *Col. Downer,* 135 F. (2d) 521 (C. C. A. 2 1943); *Arbitman* v. *Woodside,* 258 Fed. 441 (C. C. A. 4 1919) and *Angelus* v. *Sullivan,* 246 Fed. 54 (C. C. A. 2).

The Circuit Court in reaching its conclusion failed to follow the decisions of this court in *U. S.* v. *Ju Toy,* 198 U. S. 253; *Lewis* v. *Frick,* 233 U. S. 291; *Tang Tun* v. *Edsell,* 223 U. S. 673; *Low Wah Suey* v. *Backus,* 225 U. S. 466 and other representative decisions.

It is clear that a well defined conflict exists between the decision in the instant case and the decisions of other Circuit Courts of Appeals and that there also exists a well defined conflict between this decision and the decisions of this Honorable Court which decisions have been hereinbefore referred to. It is respectfully submitted that the court below erred as above indicated and that the question involved is of such importance that it should be settled by this Court.

Conclusion.

Your petitioner respectfully submits that the questions presented by the foregoing petition show a well defined conflict exists between the decision of the various Circuit Courts of Appeals as well as a conflict between the decision of the Circuit Court of Appeals for the Third Circuit and the decisions of this Honorable Court and that there is involved an important question of federal law which has not been, but should be, decided by this Court and that this question should be reviewed by this Court.

Respectfully submitted,

GEORGE R. SOMMER,
Attorney for and of Counsel with Petitioner.